IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 12631 of 2004

Between:

Vasireddy Yesudasu, S/o Venkata Rayudu,
R/o Dr.No. 70.4.18, Opp: KVR Guest House, Ramanayyapet, Kakinada, E.G. District.

..... PETITIONER

AND

1 Govt. of A.P. Rep. by its Secretary, Minor Irrigation Department, Secretariat, Secretariat Buildings, Hyderabad.
2 D.E. Irrigation, Pitapuram, Samalkote Road, Jaggayyacheruvu, East Godavari District.
3 A.E. Irrigation, Pitapuram, Samalkote Road, Jaggayyacheruvu, East Godavari District.
4 Mandal Revenue Officer, Samalkote Road, Samalkote, East Godavari District.
5 S.H.O. Timmapuram, Samalkote Mandal, Thimmapuram Village, East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in digging the kalva around our lands and release the water is highly illegal arbitrary and against the principles of natural justice and against the right to property guaranteed in fundamental rights Under Constitution of India, and further directing the respondents to close the newly dug unauthorised kalva in Sy.Nos. 146/1 to 146/8 connecting it to Raju Tank.

Counsel for the Petitioner : MRS.D.GEETHA

Counsel for the Respondents :GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.12631 OF 2004

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ORDER :

The petitioner claims to be the owner and possessor of Ac.9-20 cents of land situated in Sy.Nos.146/1 to 146/8 of Pavara village, Samalkote Mandal, E.G. District. He states that the said land forms part of a large extent, in respect of which pattas were granted by the Government on 05-05-1916 and that the beneficiaries have been cultivating the same by paying taxes regularly. Some of the pattadars including the petitioner's predecessor in title sold away their lands for a valuable consideration and that since the date of his purchase during the years 1998-2000, the petitioner has been cultivating the lands in question. It is also stated that in Sy.No.145 of Pavara village, there is an irrigation tank by name 'Raju Tank' and whenever it reaches Full Tank Level, the lower level lands around it are submergible. It is further stated that when a dispute arose about the construction of boundary-bunds around the land of the petitioner, he had to file a civil suit which is still pending.

Now, the grievance of the petitioner is that the respondents 2 to 5 have highhandedly dug 300 meters of canal in his land without any notice to him and without following due process of law. It is alleged that the respondents 2 to 5 have resorted to highhanded and unauthorized action at the instance of the leaders of the ruling party. It is also contended that as a matter of fact there is no need to dig the canal in his land in Sy.Nos.146/1 to 146/8 since the land in Sy.No.148 which is nearer to the tank is available. It is alleged that due to the said action of the respondents, the entire land of the petitioner is submerged and that he is prevented from carrying on any agricultural operations in his own land. Hence, this writ petition seeking a declaration that the action of the respondents is arbitrary and illegal.

On behalf of the respondents, the Assistant Executive Engineer, I&CAD Department, Samalkote Raod, Jaggayyacheruvu, E.G. District, who is the third respondent herein, filed a counter-affidavit stating that the Raju Tank situated in Sy.No.145 of Pavara village is serving an ayacut of 825 acres. It is a feeder tank to the ayacut as well as the lower level tanks. It is further stated that an extent of Ac.9-20 cents in Sy.No.146 and another extent of 41 acres are in the foreshore of the tank bed which are submergible lands. So far as the allegation of the petitioner that a canal has been dug in his land, it is stated that the respondents have only restored the supply channel to the tank which was in existence at the inception of the tank which was occupied by the petitioner and that the allegation that it was done at the instance of political leaders is false. It is also stated that the question of acquisition of land or notice to the petitioner does not arise since what was done by the respondents is only restoration of the existing supply course. It is also stated that the lands of the petitioners are on the foreshore and therefore they are subjected to submersion whenever the tank is at full-tank-level. The petitioners having purchased the lands knowing fully well the nature of the same cannot make any complaint about the submergence.

I have heard the learned Counsel for both parties and perused the material on record.

The learned Counsel for the petitioner while placing reliance upon the provisions of the A.P. Irrigation, Utilisation and Command Area Development Act, 1984 (for short,

'the Act') vehemently contended that the construction of field channels for supply of water to the lands can be done only after following the detailed procedure as prescribed under Chapter-IV of the Act. The contention of the learned Counsel is that the "systematic land development" includes not only the construction of field channels but also the restoration of the same and therefore even assuming that the impugned action of the respondents was only for the purpose of restoration of the existing channel, the same cannot be done without complying with the mandatory procedure prescribed under the Act. Thus, according to the learned Counsel, the entire action of the respondents is arbitrary and illegal and therefore it is a fit case where the respondents shall be directed to close the channel dug by them.

On the other hand, the learned Government Pleader contends that the lands in question being foreshore lands of Raju Tank, they are always subjected to submergence. In support of his submission, he relied upon the finding recorded by the Court of Principal Senior Civil Judge, Kakinada in I.A.No.498/2000 in O.S.No.94/2000 which is also affirmed by this Court while dismissing the application for temporary injunction filed by the petitioner. The learned Government Pleader contends that the petitioner cannot raise any objection as to the restoration of supply channel to the tank and the present writ petition is misconceived and liable to be dismissed.

From the material on record, it is clear that the land which is in occupation of the petitioner is a foreshore land of Raju Tank and submergible when the tank is at full tank level. Even as per the affidavit of the petitioner, there is an existing "canal" in his land to an extent of 30 meters which, according to the petitioner, was dug long back by the respondents without following due process of law. The affidavit of the petitioner does not disclose whether any protest was made by the petitioner at any point of time regarding the said canal. However, now the grievance of the petitioner is that the said existing canal has been extended by the respondents 2 to 4 to a further length of 300 meters highhandedly by taking Police aid. The petitioner also alleges that the said action of the respondents has resulted in submergence of the entire land of the petitioner.

The said plea of the petitioner has been totally denied by the respondents. The version of the respondents is that what was done is only restoration of the supply channel to the tank which was in existence at the inception of the tank.

As can be seen, the matter involves several disputed questions of fact which cannot be gone into and adjudicated in exercise of the jurisdiction under Article 226 of the Constitution of India. Even as per the pleadings of the petitioner, it is not clear whether the “canal” alleged to have been executed by the respondents highhandedly is a field channel or supply course to the tank, whereas the specific case of the respondents is that it is a supply channel / course to the tank which was in existence at the inception of the tank and was occupied by the petitioner.

It is true that under the A.P. Irrigation Utilisation and Command Area Development Act, 1984, a detailed procedure has been prescribed with regard to construction of field channels, regulation of supply of water and related matters. The statute provides for constitution of several Boards, Committees and appointment of officers like Irrigation Officer and Land Development Officer, who are conferred with the power to streamline the systematic land development and maintenance of irrigation system. Against the orders of all such officers, an Appeal lies to the District Collector, whose order is final.

It is to be noted that under Section 13(6) of the Act, the Land Development Officer is empowered to enter upon the lands required for the construction of field channel and to cause construction of the field channel as if a declaration has been made by the State Government for the acquisition thereof under Section 6 of the Land Acquisition Act, 1894 and as if the State Government had issued orders for immediate possession being taken under Section 17 of the Act. In the light of the said provisions, even assuming that the respondents have constructed a new field channel, it cannot be said that they are not competent to proceed with the same without initiating the proceedings under the Land Acquisition Act. Be that as it may, keeping in view the specific plea of the respondents that what was done by them is nothing but restoration of the existing supply channel to the tank, which plea stood unrebutted since the petitioner did not choose to file any reply affidavit, I am not

convinced with the submission of the learned Counsel for the petitioner that the action of the respondents is contrary to the statutory provisions.

Having regard to the facts and circumstances and since the matter involves serious disputed questions of fact, which require a detailed examination of the evidence as may be had in a suit, the claim of the petitioner cannot be adjudicated in the summary proceeding under Article 226 of the Constitution of India. In the circumstances, without expressing any opinion with regard to the rival claims made by the parties, I deem it appropriate to dispose of the writ petition with a direction to the District Collector, East Godavari District who is the appellate authority under the Act to call for a report from the Divisional Engineer (Irrigation), Pitapuram, Samalkote Road and the Mandal Revenue Officer, Samalkote Mandal, the respondents 2 and 4 herein, as to the allegations made by the petitioner herein with regard to the submergence of his entire land in Sy.Nos.146/1 to 146/8 situated at Pavara village due to the alleged action of the respondents 2 to 5 in digging a “canal” in his land in the month of July, 2004 and to pass appropriate orders in accordance with law after affording due opportunity to the petitioner as well as all the parties concerned. Such exercise shall be made as expeditiously as possible preferably within a period of two weeks from the date of receipt of this order.

The Writ Petition is accordingly disposed of. No costs.

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31st August, 2004.

gbs

To

1 The Secretary, Govt. of A.P., Minor Irrigation Department,
Secretariat, Secretariat Buildings, Hyderabad.
2 D.E. Irrigation, Pitapuram, Samalkote Road, Jaggayyacheruvu, East Godavari

District.
3 A.E. Irrigation, Pitapuram, Samalkote Road, Jaggayyacheruvu, East Godavari District.
4 Mandal Revenue Officer, Samalkote Road, Samalkote, East Godavari District.
5 S.H.O. Timmapuram, Samalkote Mandal, Thimmapuram Village, East Godavari District.

6. 2CCs to G.P. for Irrigation & Command Area Development, High Court Bldgs, Hydeabad. (OUT).

7. 2CD copies.